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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/472,088	12/23/1999	N.S. RAMESH	D-30030-01	8299

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EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/472,088

Applicant(s)

RAMESH, N.S.

Examiner

Hai Vo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6-12, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park et al (US 5,149,579) in view of Gusavage et al (US 5,670,552). Park teaches a composite material comprising one functional layer of ethylene-vinyl alcohol sandwiched between the two foam layers wherein the thickness of the functional layer constitutes less than about 5% of the total thickness of the composite material (column 8, line 58 et seq.). Since the thickness of each foam layer is about 115 mils or 0.115 inch (table 2), the functional layer would clearly have a thickness of about 1.15 mils. Park teaches the foam can be made of polypropylene homopolymer, ethylene-propylene copolymer, low density polyethylene and a mixture thereof (column 18, lines 40-55). Park teaches the polypropylene foam having a density of 8.55 lb/ft³ (example 8). The Declaration received on November 15, 2002 clearly demonstrates that the coating thickness of about 1 to 6 mils is critical to the higher bonding strength between the two foam layers. Since the functional layer of Park happens to have a thickness within the claimed range and the composite material of Park meets the recited structure, it is the examiner's position that the bond strength between the two foam layers would

be inherently present within a range as set forth in the claims in accordance with the declaration.

Park does not specifically disclose the function layer or the oxygen barrier film formed from ethylene/alpha olefin copolymer. It appears that Park and Gusavage references are related to thermoformed articles for use in packaging applications. Gusavage teaches the oxygen barrier film typically made of one or more polyolefins including ethylene/alpha-olefin copolymer, ethylene/vinyl acetate copolymer and ethylene/vinyl alcohol copolymer (column 6, lines 35-40). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include ethylene/alpha-olefin copolymer into the functional layer of Park because the combination of ethylene/alpha-olefin copolymer and ethylene/vinyl alcohol copolymer is very common for use in the oxygen barrier film of the foam packaging articles.

With regard to claim 20, neither Park nor Gusavage discloses or suggests a composite structure useful as a bodyboard flotation article. Most available water sport requires sufficient stiffness to counteract the intense forces encountered in surfing and board sailing. The composite structure of Park as modified by Gusavage can be useful as a body board or water sport because the polypropylene foam in the composite structure is capable of providing stiffness necessary to enable the boards to withstand intense forces encountered in surfing and board sailing. Further, it has been held that a recitation with respect to the manner in which a claimed composite structure is intended to be employed does not differentiate the claimed composite

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structure from a prior art polypropylene foam sheet satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

*The examiner suggests that incorporation of limitations in claim 21 to the independent claims would overcome the art rejections above.

3. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park et al (US 5,149,579) and Gusavage et al (US 5,670,552) as applied to claims 1 and 12 above, in view of Baxmann et al (US 4,046,945). Neither Park nor Gusavage discloses a functional layer made from ethylene/propylene rubber. Baxmann teaches a film of ethylene-propylene rubber useful as a vapor barrier (column 4, lines 2-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the vinyl ethylene alcohol by the ethylene/propylene rubber in the functional layer because of its easy availability and economical advantage.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 09/826,221 in view of Hurley et al (US 5,938,878). Claims 1-21 of copending Application No. 09/826,221 teach every single element in the presently claimed subject matter except the coating comprising at least one member selected from the group consisting of ethylene/alpha olefin copolymer, ethylene/propylene rubber and ethylene/acrylic copolymer. Hurley teaches a composite material comprising a non-foamed core layer of ethylene/alpha olefin copolymer that is sandwiched between the two foam layers having different chemical compositions (figure 2, column 9, lines 20-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the ethylene/alpha olefin copolymer as the coating layer of the composite structure because of its easy availability and economical advantage.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

6. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.
7. The art rejections in the office action mailed on 01/29/03 have been overcome by the present response.
8. The arguments that ethylene-alpha olefin (EAO) has been found to provide excellent adhesion between two different polyolefin foam sheets whereas EVOH provides poor adhesion between two different polyolefin foam sheets are not found

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persuasive because they are just simply Applicant's opinions. Applicant needs to provide factual evidence to support his assertions to make the arguments to be more persuasive for patentability.

Conclusion


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426.

The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV
July 31, 2003


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700